

**SUBSTITUTE FOR THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 3773
OFFERED BY M. _____**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Foreign Intelligence
3 Surveillance Modernization Act of 2007”.

4 SEC. 2. DEFINITIONS.

5 (a) AGENT OF A FOREIGN POWER.—Subsection
6 (b)(1) of section 101 of the Foreign Intelligence Surveil-
7 lance Act of 1978 (50 U.S.C. 1801) is amended—

8 (1) in subparagraph (B), by striking “; or” and
9 inserting “;”; and

10 (2) by adding at the end the following:

11 “(D) is reasonably expected to possess,
12 control, transmit, or receive foreign intelligence
13 information while such person is in the United
14 States, provided that the certification required
15 under section 104(a)(6) or 303(a)(6) contains a
16 description of the kind of significant foreign in-
17 telligence information sought;”.

1 (b) ELECTRONIC SURVEILLANCE.—Subsection (f) of
2 such section is amended to read as follows:

3 “(f) ‘electronic surveillance’ means—

4 “(1) the installation or use of an electronic, me-
5 chanical, or other surveillance device for acquiring
6 information by intentionally directing surveillance at
7 a particular, known person who is reasonably be-
8 lieved to be located within the United States under
9 circumstances in which that person has a reasonable
10 expectation of privacy and a warrant would be re-
11 quired for law enforcement purposes; or

12 “(2) the intentional acquisition of the contents
13 of any communication under circumstances in which
14 a person has a reasonable expectation of privacy and
15 a warrant would be required for law enforcement
16 purposes, if both the sender and all intended recipi-
17 ents are reasonably believed to be located within the
18 United States.”.

19 (c) WIRE COMMUNICATION.—Subsection (l) of such
20 section is amended by striking subsection (l).

21 (d) MINIMIZATION PROCEDURES.—Subsection (h) of
22 such section is amended

23 (1) in subsection (3) by striking “; and” and in-
24 serting “.”; and

25 (2) by striking subsection (4).

1 (e) CONTENTS.—Subsection (n) of such section is
2 amended to read as follows:

3 “(n) ‘Contents’, when used with respect to a commu-
4 nication, includes any information concerning the sub-
5 stance, purport, or meaning of that communication.”.

6 **SEC. 3. ATTORNEY GENERAL AUTHORIZATION FOR ELEC-**
7 **TRONIC SURVEILLANCE.**

8 (a) IN GENERAL.—The Foreign Intelligence Surveil-
9 lance Act of 1978 (50 U.S.C. 1801 et seq.) is further
10 amended by striking section 102 and inserting the fol-
11 lowing:

12 “AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR
13 FOREIGN INTELLIGENCE PURPOSES

14 “SEC. 102. (a) IN GENERAL.—Notwithstanding any
15 other law, the President, acting through the Attorney Gen-
16 eral, may authorize electronic surveillance without a court
17 order under this title to acquire foreign intelligence infor-
18 mation for periods of up to one year if the Attorney Gen-
19 eral—

20 “(1) CERTIFIES IN WRITING UNDER OATH
21 THAT.—

22 “(A) THE ELECTRONIC SURVEILLANCE IS
23 DIRECTED AT.—

24 “(i) the acquisition of the contents of
25 communications of a foreign power, as de-

1 fined in paragraph (1), (2), or (3) of sec-
2 tion 101(a); or

3 “(ii) the acquisition of technical intel-
4 ligence, other than the spoken communica-
5 tions of individuals, from property or
6 premises under the control of a foreign
7 power, as defined in paragraph (1), (2), or
8 (3) of section 101(a); and

9 “(B) the proposed minimization procedures
10 with respect to such surveillance meet the defi-
11 nition of minimization procedures under section
12 101(h); and

13 “(2) reports such minimization procedures and
14 any changes thereto to the Permanent Select Com-
15 mittee on Intelligence of the House of Representa-
16 tives and the Select Committee on Intelligence of the
17 Senate at least 30 days prior to the effective date
18 of such minimization procedures, unless the Attor-
19 ney General determines immediate action is required
20 and promptly notifies the committees of such mini-
21 mization procedures and the reason for their becom-
22 ing effective immediately.

23 “(b) MINIMIZATION PROCEDURES.—An electronic
24 surveillance authorized under this section may be con-
25 ducted only in accordance with the Attorney General’s

1 certification and the minimization procedures. The Attor-
2 ney General shall assess compliance with such procedures
3 and shall report such assessments to the Permanent Select
4 Committee on Intelligence of the House of Representatives
5 and the Select Committee on Intelligence of the Senate
6 under the provisions of section 108(a).

7 “(c) SUBMISSION OF CERTIFICATION.—The Attorney
8 General shall promptly transmit under seal to the court
9 established under section 103(a) a copy of the certification
10 under subsection (a)(1). Such certification shall be main-
11 tained under security measures established by the Chief
12 Justice with the concurrence of the Attorney General, in
13 consultation with the Director of National Intelligence,
14 and shall remain sealed unless

15 “(1) an application for a court order with re-
16 spect to the surveillance is made under section 104;
17 or

18 “(2) the certification is necessary to determine
19 the legality of the surveillance under section 106(f).

20 “AUTHORIZATION FOR ACQUISITION OF FOREIGN
21 INTELLIGENCE INFORMATION

22 “SEC. 102A. (a) IN GENERAL.—Notwithstanding
23 any other law, the President, acting through the Attorney
24 General may, for periods of up to one year, authorize the
25 acquisition of foreign intelligence information concerning
26 persons reasonably believed to be outside the United

1 States if the Attorney General certifies in writing under
2 oath that the Attorney General has determined that—

3 “(1) the acquisition does not constitute elec-
4 tronic surveillance;

5 “(2) the acquisition involves obtaining the for-
6 eign intelligence information from or with the assist-
7 ance of a communications service provider, custo-
8 dian, or other person (including any officer, em-
9 ployee, agent, or other specified person of such serv-
10 ice provider, custodian, or other person) who has ac-
11 cess to communications, either as they are trans-
12 mitted or while they are stored, or equipment that
13 is being or may be used to transmit or store such
14 communications;

15 “(3) a significant purpose of the acquisition is
16 to obtain foreign intelligence information; and

17 “(4) the minimization procedures to be used
18 with respect to such acquisition activity meet the
19 definition of minimization procedures under section
20 101(h).

21 “(b) SPECIFIC PLACE NOT REQUIRED.—A certifi-
22 cation under subsection (a) is not required to identify the
23 specific facilities, places, premises, or property at which
24 the acquisition of foreign intelligence information will be
25 directed.

1 “(c) SUBMISSION OF CERTIFICATION.—The Attorney
2 General shall immediately transmit under seal to the court
3 established under section 103(a) a copy of a certification
4 made under subsection (a). Such certification shall be
5 maintained under security measures established by the
6 Chief Justice of the United States and the Attorney Gen-
7 eral, in consultation with the Director of National Intel-
8 ligence, and shall remain sealed unless the certification is
9 necessary to determine the legality of the acquisition
10 under section 102B.

11 “(d) MINIMIZATION PROCEDURES.—An acquisition
12 under this section may be conducted only in accordance
13 with the certification of the Attorney General and the
14 minimization procedures adopted by the Attorney General.
15 The Attorney General shall assess compliance with such
16 procedures and shall report such assessments to the Per-
17 manent Select Committee on Intelligence of the House of
18 Representatives and the Select Committee on Intelligence
19 of the Senate under section 108(a).

20 “DIRECTIVES RELATING TO ELECTRONIC SURVEILLANCE
21 AND OTHER ACQUISITIONS OF FOREIGN INTEL-
22 LIGENCE INFORMATION

23 “SEC. 102B.

24 “(a) DIRECTIVE.—With respect to an authorization
25 of electronic surveillance under section 102 or an author-

1 ization of an acquisition under section 102A, the Attorney
2 General may direct a person to—

3 “(1) immediately provide the Government with
4 all information, facilities, and assistance necessary
5 to accomplish the acquisition of foreign intelligence
6 information in such a manner as will protect the se-
7 crecy of the electronic surveillance or acquisition and
8 produce a minimum of interference with the services
9 that such person is providing to the target; and “(2)
10 maintain under security procedures approved by the
11 Attorney General and the Director of National Intel-
12 ligence any records concerning the electronic surveil-
13 lance or acquisition or the aid furnished that such
14 person wishes to maintain.

15 “(2) immediately provide the Government with
16 all information, facilities, and assistance necessary
17 to accomplish the acquisition of foreign intelligence
18 information in such a manner as will protect the se-
19 crecy of the electronic surveillance or acquisition and
20 produce a minimum of interference with the services
21 that such person is providing to the target; and

22 “(3) maintain under security procedures ap-
23 proved by the Attorney General and the Director of
24 National Intelligence any records concerning the

1 electronic surveillance or acquisition or the aid fur-
2 nished that such person wishes to maintain.

3 “(b) COMPENSATION.—The Government shall com-
4 pensate, at the prevailing rate, a person for providing in-
5 formation, facilities, or assistance pursuant to subsection
6 (a).

7 “(c) FAILURE TO COMPLY.—In the case of a failure
8 to comply with a directive issued pursuant to subsection
9 (a), the Attorney General may invoke the aid of the court
10 established under section 103(a) to compel compliance
11 with the directive. The court shall issue an order requiring
12 the person to comply with the directive if it finds that the
13 directive was issued in accordance with subsection (a) and
14 is otherwise lawful. Failure to obey an order of the court
15 may be punished by the court as contempt of court. Any
16 process under this section may be served in any judicial
17 district in which the person may be found.

18 “(d) REVIEW OF PETITIONS.—(1)(A) A person re-
19 ceiving a directive issued pursuant to subsection (a) may
20 challenge the legality of that directive by filing a petition
21 with the pool established under section 103(e)(1).

22 “(B) The presiding judge designated pursuant to sec-
23 tion 103(b) shall assign a petition filed under subpara-
24 graph (A) to one of the judges serving in the pool estab-
25 lished by section 103(e)(1). Not later than 24 hours after

1 the assignment of such petition, the assigned judge shall
2 conduct an initial review of the directive. If the assigned
3 judge determines that the petition is frivolous, the as-
4 signed judge shall immediately deny the petition and af-
5 firm the directive or any part of the directive that is the
6 subject of the petition. If the assigned judge determines
7 the petition is not frivolous, the assigned judge shall, with-
8 in 72 hours, consider the petition in accordance with the
9 procedures established under section 103(e)(2) and pro-
10 vide a written statement for the record of the reasons for
11 any determination under this subsection.

12 “(2) A judge considering a petition to modify or set
13 aside a directive may grant such petition only if the judge
14 finds that such directive does not meet the requirements
15 of this section or is otherwise unlawful. If the judge does
16 not modify or set aside the directive, the judge shall imme-
17 diately affirm such directive, and order the recipient to
18 comply with such directive.

19 “(3) Any directive not explicitly modified or set aside
20 under this subsection shall remain in full effect.

21 “(e) APPEALS.—The Government or a person receiv-
22 ing a directive reviewed pursuant to subsection (d) may
23 file a petition with the Court of Review established under
24 section 103(b) for review of the decision issued pursuant
25 to subsection (d) not later than 7 days after the issuance

1 of such decision. Such court of review shall have jurisdic-
2 tion to consider such petitions and shall provide for the
3 record a written statement of the reasons for its decision.
4 On petition for a writ of certiorari by the Government or
5 any person receiving such directive, the record shall be
6 transmitted under seal to the Supreme Court, which shall
7 have jurisdiction to review such decision.

8 “(f) PROCEEDINGS.—Judicial proceedings under this
9 section shall be concluded as expeditiously as possible. The
10 record of proceedings, including petitions filed, orders
11 granted, and statements of reasons for decision, shall be
12 maintained under security measures established by the
13 Chief Justice of the United States, in consultation with
14 the Attorney General and the Director of National Intel-
15 ligence.

16 “(g) SEALED PETITIONS.—All petitions under this
17 section shall be filed under seal. In any proceedings under
18 this section, the court shall, upon request of the Govern-
19 ment, review ex parte and in camera any Government sub-
20 mission, or portions of a submission, which may include
21 classified information.

22 “(h) LIABILITY.—No cause of action shall lie in any
23 court against any person for providing any information,
24 facilities, or assistance in accordance with a directive
25 under this section.

1 “(i) RETENTION OF DIRECTIVES AND ORDERS.—A
2 directive made or an order granted under this section shall
3 be retained for a period of not less than 10 years from
4 the date on which such directive or such order is made.

5 “USE OF INFORMATION ACQUIRED UNDER SECTION 102A

6 “SEC. 102C. (a) USE OF INFORMATION.—Informa-
7 tion acquired from an acquisition conducted pursuant to
8 section 102A concerning any United States person may
9 be used and disclosed by Federal officers and employees
10 without the consent of the United States person only in
11 accordance with the minimization procedures required by
12 section 102A. No otherwise privileged communication ob-
13 tained in accordance with, or in violation of, the provisions
14 of section 102A shall lose its privileged character. No in-
15 formation from an acquisition pursuant to section 102A
16 may be used or disclosed by Federal officers or employees
17 except for lawful purposes.

18 “(b) NOTIFICATION BY UNITED STATES.—Whenever
19 the Government intends to enter into evidence or other-
20 wise use or disclose in any trial, hearing, or other pro-
21 ceeding in or before any court, department, officer, agen-
22 cy, regulatory body, or other authority of the United
23 States, against a person who was the target of, or whose
24 communications or activities were subject to, an acquisi-
25 tion authorized pursuant to section 102A, any information

1 obtained or derived from such acquisition, the Government
2 shall, prior to the trial, hearing, or other proceeding or
3 at a reasonable time prior to an effort to disclose or so
4 use that information or submit it in evidence, notify such
5 person and the court or other authority in which the infor-
6 mation is to be disclosed or used that the Government in-
7 tends to so disclose or so use such information.

8 “(c) NOTIFICATION BY STATES OR POLITICAL SUB-
9 DIVISION.—Whenever any State or political subdivision
10 thereof intends to enter into evidence or otherwise use or
11 disclose in any trial, hearing, or other proceeding in or
12 before any court, department, officer, agency, regulatory
13 body, or other authority of a State or a political subdivi-
14 sion thereof, against a person who was the target of, or
15 whose communications or activities were subject to, an ac-
16 quisition authorized pursuant to section 102A, any infor-
17 mation obtained or derived from such acquisition, the
18 State or political subdivision thereof shall notify such per-
19 son, the court, or other authority in which the information
20 is to be disclosed or used, and the Attorney General that
21 the State or political subdivision thereof intends to so dis-
22 close or so use such information.

23 “(d) MOTION TO SUPPRESS.—(1) Any person against
24 whom evidence obtained or derived from an acquisition au-
25 thorized pursuant to section 102A is to be, or has been,

1 introduced or otherwise used or disclosed in any trial,
2 hearing, or other proceeding in or before any court, de-
3 partment, officer, agency, regulatory body, or other au-
4 thority of the United States, a State, or a political subdivi-
5 sion thereof, may move to suppress the evidence obtained
6 or derived from such acquisition on the grounds that

7 “(A) the information was unlawfully ac-
8 quired; or

9 “(B) the acquisition was not properly
10 made in conformity with an authorization under
11 section 102A.

12 “(2) A person moving to suppress evidence under
13 paragraph (1) shall make the motion to suppress the evi-
14 dence before the trial, hearing, or other proceeding unless
15 there was no opportunity to make such a motion or the
16 person was not aware of the grounds of the motion.

17 “(e) IN CAMERA AND EX PARTE REVIEW BY DIS-
18 TRICT COURT.—Whenever a court or other authority is
19 notified pursuant to subsection (b) or (c) of this section,
20 or whenever a motion is made pursuant to subsection (d)
21 of this section, or whenever any motion or request is made
22 pursuant to any other statute or rule of the United States
23 or any State by a person who was the target of, or whose
24 communications or activities were subject to, an acquisi-

1 tion authorized pursuant to section 102A before any court
2 or other authority of the United States or any State

3 “(1) to discover or obtain applications or orders
4 or other materials relating to an acquisition author-
5 ized pursuant to section 102A, or

6 “(2) to discover, obtain, or suppress evidence or
7 information obtained or derived from an acquisition
8 authorized pursuant to section 102A, the United
9 States district court or, where the motion is made
10 before another authority, the United States district
11 court in the same district as the authority, shall,
12 notwithstanding any other law, if the Attorney Gen-
13 eral files an affidavit under oath that disclosure or
14 an adversary hearing would harm the national secu-
15 rity of the United States, review in camera and ex
16 parte the application, order, and such other mate-
17 rials relating to the acquisition as may be necessary
18 to determine whether such acquisition was lawfully
19 authorized and conducted. In making this deter-
20 mination, the court may disclose to the person who
21 was the target of, or whose communications or ac-
22 tivities were subject to, an acquisition authorized
23 pursuant to section 102A, under appropriate secu-
24 rity procedures and protective orders, portions of the
25 application, order, or other materials relating to the

1 acquisition only where such disclosure is necessary
2 to make an accurate determination of the legality of
3 the acquisition.

4 “(f) SUPPRESSION OF EVIDENCE; DENIAL OF MO-
5 TION.—If the United States district court, pursuant to
6 subsection (e) of this section, determines that an acquisi-
7 tion authorized pursuant to section 102A was not lawfully
8 authorized or conducted, it shall, in accordance with the
9 requirements of law, suppress the evidence which was un-
10 lawfully obtained or derived from the acquisition or other-
11 wise grant the motion of the person who was the target
12 of, or whose communications or activities were subject to,
13 an acquisition authorized pursuant to section 102A. If the
14 court determines that such acquisition was lawfully au-
15 thorized and conducted, it shall deny the motion of the
16 person who was the target of, or whose communications
17 or activities were subject to, an acquisition authorized pur-
18 suant to section 102A except to the extent that due proc-
19 ess requires discovery or disclosure.

20 “(g) FINALITY OF ORDERS.—Orders granting mo-
21 tions or requests under subsection (f) of this section, deci-
22 sions under this section that an acquisition was not law-
23 fully authorized or conducted, and orders of the United
24 States district court requiring review or granting disclo-
25 sure of applications, orders, or other materials relating to

1 an acquisition shall be final orders and binding upon all
2 courts of the United States and the several States except
3 a United States court of appeals and the Supreme Court.

4 “(h) CONSULTATION WITH LAW ENFORCEMENT OF-
5 FICERS.—(1) Federal officers who acquire foreign intel-
6 ligence information pursuant to section 102A may consult
7 with Federal law enforcement officers or law enforcement
8 personnel of a State or political subdivision of a State (in-
9 cluding the chief executive officer of that State or political
10 subdivision who has the authority to appoint or direct the
11 chief law enforcement officer of that State or political sub-
12 division) to coordinate efforts to investigate or protect
13 against

14 “(A) actual or potential attack or other
15 grave hostile acts of a foreign power or an
16 agent of a foreign power;

17 “(B) sabotage, international terrorism, or
18 the international proliferation of weapons of
19 mass destruction by a foreign power or an
20 agent of a foreign power; or

21 “(C) clandestine intelligence activities by
22 an intelligence service or network of a foreign
23 power or by an agent of a foreign power.

1 “(2) Coordination authorized under paragraph (1)
2 shall not preclude the certification required by section
3 102A.

4 “(i) PROTECTIVE ORDERS AND PRIVILEGES.—Noth-
5 ing in this section shall prevent the United States from
6 seeking protective orders or asserting privileges ordinarily
7 available to the United States to protect against the disclo-
8 sure of classified information.”.

9 (b) TABLE OF CONTENTS.—The table of contents in
10 the first section of the Foreign Intelligence Surveillance
11 Act of 1978 (50 U.S.C. 1801 et seq.) is amended by in-
12 serting after the item relating to section 102 the following:

“Sec. 102A. Authorization for acquisition of foreign intelligence information
“Sec. 102B. Directives relating to electronic surveillance and other acquisitions
of foreign intelligence information
“Sec. 102C. Use of information acquired under section 102A.”.

13 **SEC. 4. JURISDICTION OF FISA COURT.**

14 Section 103 of the Foreign Intelligence Surveillance
15 Act of 1978 (50 U.S.C. 1803) is amended—

16 (1) in subsection (a), by inserting “at least” be-
17 fore “seven of the United States judicial circuits”;
18 and

19 (2) by adding at the end the following new sub-
20 section:

21 “(g) Applications for a court order under section 104
22 of this title are authorized if the Attorney General ap-
23 proves such applications to the court having jurisdiction

1 under this section, and a judge to whom an application
2 is made may, notwithstanding any other law, grant an
3 order, in conformity with section 105, approving electronic
4 surveillance of a foreign power or an agent of a foreign
5 power for the purpose of obtaining foreign intelligence in-
6 formation.”.

7 **SEC. 5. APPLICATIONS FOR COURT ORDERS.**

8 Section 104 of the Foreign Intelligence Surveillance
9 Act of 1978 (50 U.S.C. 1804) is amended—

10 (1) in subsection (a)—

11 (A) by striking paragraphs (2) and (11);

12 (B) by redesignating paragraphs (3)
13 through (10) as paragraphs (2) through (9), re-
14 spectively;

15 (C) in paragraph (5), as redesignated by
16 subparagraph (B), by striking “detailed de-
17 scription” and inserting “summary descrip-
18 tion”;

19 (D) in paragraph (6), as redesignated by
20 subparagraph (B)—

21 (i) in the matter preceding subpara-
22 graph (A), by striking “or officials des-
23 ignated” and all that follows through “con-
24 sent of the Senate” and inserting “des-
25 ignated by the President to authorize elec-

1 tronic surveillance for foreign intelligence
2 purposes”;

3 (ii) in subparagraph (C), by striking
4 “techniques;” and inserting “techniques;
5 and”;

6 (iii) by striking subparagraph (D);
7 and

8 (iv) by redesignating subparagraph
9 (E) as subparagraph (D);

10 (E) in paragraph (7), as redesignated by
11 subparagraph (B), by striking “a statement of
12 the means” and inserting “a summary state-
13 ment of the means”;

14 (F) in paragraph (8), as redesignated by
15 subparagraph (b)—

16 (i) by striking “a statement” and in-
17 serting “a summary statement”; and

18 (ii) by striking “application;” and in-
19 serting “application; and”; and

20 (G) in paragraph (9), as redesignated by
21 subparagraph (B), by striking “; and” and in-
22 serting “.”

23 (2) by striking subsection (b);

24 (3) by redesignating subsections (c) through (e)

25 as subsections (b) through (d), respectively; and

1 (4) in paragraph (1)(A) of subsection (d), as re-
2 designated by paragraph (3), by striking “or the Di-
3 rector of National Intelligence” and inserting “the
4 Director of National Intelligence, or the Director of
5 the Central Intelligence Agency”.

6 **SEC. 6. ISSUANCE OF AN ORDER.**

7 Section 105 of the Foreign Intelligence Surveillance
8 Act of 1978 (50 U.S.C. 1805) is amended—

9 (1) in subsection (a)—

10 (A) by striking paragraph (1); and

11 (B) by redesignating paragraphs (2)
12 through (5) as paragraphs (1) through (4), re-
13 spectively;

14 (2) in paragraph (1) of subsection (c)—

15 (A) in subparagraph (D), by striking “sur-
16 veillance;” and inserting “surveillance; and”;

17 (B) in subparagraph (E), by striking “ap-
18 proved; and” and inserting “approved.”; and

19 (C) by striking subparagraph (F).

20 (3) by striking subsection (d);

21 (4) by redesignating subsections (e) through (i)
22 as subsections (d) through (h), respectively;

23 (5) in subsection (d), as redesignated by para-
24 graph (4)—

1 (A) by striking “120 days” and insert
2 “one year”, and

3 (B) by amending paragraph (2) to read as
4 follows:

5 “(2) Extensions of an order issued under this
6 title may be granted on the same basis as an origi-
7 nal order upon an application for an extension and
8 new findings made in the same manner as required
9 for an original order and may be for a period not
10 to exceed one year.”;

11 (6) in subsection (e), as redesignated by para-
12 graph (4), to read as follows:

13 “(e) Notwithstanding any other provision of this title,
14 the Attorney General may authorize the emergency em-
15 ployment of electronic surveillance if the Attorney Gen-
16 eral—

17 “(1) determines that an emergency situation ex-
18 ists with respect to the employment of electronic
19 surveillance to obtain foreign intelligence informa-
20 tion before an order authorizing such surveillance
21 can with due diligence be obtained;

22 “(2) determines that the factual basis for
23 issuance of an order under this title to approve such
24 electronic surveillance exists;

1 “(3) informs a judge having jurisdiction under
2 section 103 at the time of such authorization that
3 the decision has been made to employ emergency
4 electronic surveillance; and

5 “(4) makes an application in accordance with
6 this title to a judge having jurisdiction under section
7 103 as soon as practicable, but not more than 168
8 hours after the Attorney General authorizes such
9 surveillance. If the Attorney General authorizes such
10 emergency employment of electronic surveillance, the
11 Attorney General shall require that the minimization
12 procedures required by this title for the issuance of
13 a judicial order be followed. In the absence of a judi-
14 cial order approving such electronic surveillance, the
15 surveillance shall terminate when the information
16 sought is obtained, when the application for the
17 order is denied, or after the expiration of 168 hours
18 from the time of authorization by the Attorney Gen-
19 eral, which ever is earliest. In the event that such
20 application for approval is denied, or in any other
21 case where the electronic surveillance is terminated
22 and no order is issued approving the surveillance, no
23 information obtained or evidence derived from such
24 surveillance shall be received in evidence or other-
25 wise disclosed in any trial, hearing, or other pro-

1 ceeding in or before any court, grand jury, depart-
2 ment, office, agency, regulatory body, legislative
3 committee, or other authority of the United States,
4 a State, or political subdivision thereof, and no in-
5 formation concerning any United States person ac-
6 quired from such surveillance shall subsequently be
7 used or disclosed in any other manner by Federal of-
8 ficers or employees without the consent of such per-
9 son, except with the approval of the Attorney Gen-
10 eral if the information is significant foreign intel-
11 ligence information or indicates a threat of death or
12 serious bodily harm to any person. The Attorney
13 General shall assess compliance with the require-
14 ments of the prior sentence and shall include such
15 assessments in the Attorney General's reports under
16 section 102(b). A denial of the application made
17 under this subsection may be reviewed as provided
18 in section 103.”;

19 (7) in subsection (h), as redesignated by para-
20 graph (4)—

21 (A) by striking “a wire or” and inserting
22 “an”; and

23 (B) by striking “physical search” and in-
24 serting “physical search or in response to a cer-
25 tification by the Attorney General or a designee

1 of the Attorney General seeking information,
2 facilities, or technical assistance from such per-
3 son under section 102B”; and

4 (8) by adding at the end the following new sub-
5 section:

6 “(i) In any case in which the Government makes an
7 application to a judge under this title to conduct electronic
8 surveillance involving communications and the judge
9 grants such application, upon the request of the applicant,
10 the judge shall also authorize the installation and use of
11 pen registers and trap and trace devices, and direct the
12 disclosure of the information set forth in section
13 1842(d)(2) of this title; such information shall not be sub-
14 ject to minimization procedures.”.

15 **SEC. 7. USE OF INFORMATION.**

16 Section 106 of the Foreign Intelligence Surveillance
17 Act of 1978 (50 U.S.C. 1806) is amended—

18 (1) in subsection (i)—

19 (A) by striking “radio communication” and
20 inserting “communication”; and

21 (B) by striking “contents indicates” and
22 inserting “contents contain significant foreign
23 intelligence information or indicate”; and

24 (2) by inserting after subsection (k) the
25 following”

1 “(l) PROTECTIVE ORDERS AND PRIVILEGES.—Noth-
2 ing in this section shall prevent the United States from
3 seeking protective orders or asserting privileges ordinarily
4 available to the United States to protect against the disclo-
5 sure of classified information.”.

6 **SEC. 8. WEAPONS OF MASS DESTRUCTION.**

7 (a) DEFINITIONS.—

8 (1) Subsection (a)(4) of section 101 of the For-
9 eign Intelligence Surveillance Act of 1978 (50
10 U.S.C. 1801(a)(4)) is amended by inserting “or the
11 international proliferation of weapons of mass de-
12 struction” after “international terrorism”.

13 (2) Subsection (b)(1) of such section (50 U.S.C.
14 1801(b)(1)) is amended—

15 (A) in subparagraph (C), by striking “; or”
16 and inserting “;”; and

17 (B) by adding at the end the following new
18 subparagraphs:

19 “(E) engages in the international prolifera-
20 tion of weapons of mass destruction, or activi-
21 ties in preparation therefor; or

22 “(F) engages in the international prolifera-
23 tion of weapons of mass destruction, or activi-
24 ties in preparation therefor, for or on behalf of
25 a foreign power; or”.

1 (3) Subsection (e)(1)(B) of such section (50
2 U.S.C. 1801(e)(1)(B)) is amended by striking “sab-
3 otage or international terrorism” and inserting “sab-
4 otage, international terrorism, or the international
5 proliferation of weapons of mass destruction”.

6 (4) Subsection (l) of such section (50 U.S.C.
7 1801(l)) is amended to read as follows:

8 “(l) ‘Weapon of mass destruction’ means—

9 “(1) any destructive device (as such term is de-
10 fined in section 921 of title 18, United States Code)
11 that is intended or has the capability to cause death
12 or serious bodily injury to a significant number of
13 people;

14 “(2) any weapon that is designed or intended to
15 cause death or serious bodily injury through the re-
16 lease, dissemination, or impact of toxic or poisonous
17 chemicals or their precursors;

18 “(3) any weapon involving a biological agent,
19 toxin, or vector (as those terms are defined in sec-
20 tion 178 of title 18, United States Code); or

21 “(4) any weapon that is designed to release ra-
22 diation or radioactivity at a level dangerous to
23 human life.”.

24 (b) USE OF INFORMATION.—

1 (1) Section 106(k)(1)(B) of the Foreign Intel-
2 ligence Surveillance Act of 1978 (50 U.S.C.
3 1806(k)(1)(B)) is amended by striking “sabotage or
4 international terrorism” and inserting “sabotage,
5 international terrorism, or the international pro-
6 liferation of weapons of mass destruction”.

7 (2) Section 305(k)(1)(B) of such Act (50
8 U.S.C. 1825(k)(1)(B)) is amended by striking “sab-
9 otage or international terrorism” and inserting “sab-
10 otage, international terrorism, or the international
11 proliferation of weapons of mass destruction”.

12 **SEC. 9. LIABILITY DEFENSE.**

13 (a) Notwithstanding any other provision of law, and
14 in addition to the immunities, privileges, and defenses pro-
15 vided by any other provision of law, no action, claim or
16 proceeding shall lie or be maintained in any court, and
17 no penalty, sanction, or other form of remedy or relief
18 shall be imposed by any court or any other body, against
19 a provider of telecommunications, electronic communica-
20 tion or remote computing service, or its employees, offi-
21 cers, or agents, for any activity during the period begin-
22 ning on September 11, 2001, and ending on the date of
23 enactment of this Act about which the Director of Na-
24 tional Intelligence certifies to the court that the provider
25 either (1) did not provide any of the information, assist-

1 ance or facilities alleged, or (2) to the extent any informa-
2 tion, assistance or facilities were provided, they were pro-
3 vided (A) pursuant to a written authorization from the
4 head (or deputy head) of a department or a federal intel-
5 ligence agency indicating that such activities had been ap-
6 proved by the President and that such activities were law-
7 ful, and (B) in connection with a communications intel-
8 ligence program authorized by the President after Sep-
9 tember 11, 2001, designed to identify, track or intercept
10 the communications of international terrorist organiza-
11 tions in order to detect or prevent terrorist attacks against
12 the United States. The certification may be provided in
13 a manner consistent with the protection of military and
14 state secrets.

15 (b) This section shall apply to all such actions, claims
16 or proceedings pending on or after the effective date of
17 this Act.

18 (c) Any such action, claim or proceeding that is
19 brought in a State court shall be deemed to arise under
20 the Constitution and laws of the United States and shall
21 be removable pursuant to section 1441 of title 28, United
22 States Code.

1 **SEC. 10. AMENDMENTS FOR PHYSICAL SEARCHES.**

2 (a) APPLICATIONS.—Section 303 of the Foreign In-
3 telligence Surveillance Act of 1978 (50 U.S.C. 1823) is
4 amended—

5 (1) IN SUBSECTION (A).—

6 (A) by striking paragraph (2);

7 (B) by redesignating paragraphs (3)
8 through (9) as paragraphs (2) through (8), re-
9 spectively;

10 (C) in paragraph (2), as redesignated by
11 subparagraph (B), by striking “detailed de-
12 scription” and inserting “summary descrip-
13 tion”;

14 (D) in paragraph (3)(C), as redesignated
15 by subparagraph (B), by inserting “or is about
16 to be” before “owned”;

17 (E) in paragraph (6), as redesignated by
18 subparagraph (B)—

19 (i) in the matter preceding subpara-
20 graph (A), by striking “or officials” and all
21 that follows through “consent of the Sen-
22 ate” and inserting “designated by the
23 President to authorize physical searches
24 for foreign intelligence purposes”;

1 (ii) in subparagraph (C), by striking
2 “techniques;” and inserting “techniques;
3 and”;

4 (iii) by striking subparagraph (D);

5 (iv) by redesignating subparagraph
6 (E) as subparagraph (D); and

7 (v) in subparagraph (D), as redesign-
8 nated by clause (iv), by striking “certifi-
9 cations required by subparagraphs (C) and
10 (D)” and inserting “certification required
11 by subparagraph (C)”; and

12 (F) in paragraph (8), as redesignated by
13 subparagraph (B), by striking “a statement”
14 and inserting “a summary statement”; and

15 (2) in subsection (d)(1)(A), by striking “or the
16 Director of National Intelligence” and inserting “the
17 Director of National Intelligence, or the Director of
18 the Central Intelligence Agency”.

19 (b) ORDERS.—Section 304 of such Act (50 U.S.C.
20 1824) is amended—

21 (1) in subsection (a)—

22 (A) by striking paragraph (1);

23 (B) by redesignating paragraphs (2)
24 through (5) as paragraphs (1) through (4), re-
25 spectively; and

1 (C) in paragraph (2)(B), as redesignated
2 by subparagraph (B), by inserting “or is about
3 to be” before “owned”;

4 (2) in subsection (e), to read as follows:

5 “(e) Notwithstanding any other provision of this title,
6 the Attorney General may authorize the emergency em-
7 ployment of a physical search if the Attorney General—
8 “(1) determines that an emergency situation ex-
9 ists with respect to the employment of a physical
10 search to obtain foreign intelligence information be-
11 fore an order authorizing such physical search can
12 with due diligence be obtained;

13 “(2) determines that the factual basis for
14 issuance of an order under this title to approve such
15 physical search exists;

16 “(3) informs a judge having jurisdiction under
17 section 103 at the time of such authorization that
18 the decision has been made to employ an emergency
19 physical search; and

20 “(4) makes an application in accordance with
21 this title to a judge having jurisdiction under section
22 103 as soon as practicable, but not more than 168
23 hours after the Attorney General authorizes such
24 physical search. If the Attorney General authorizes
25 such emergency employment of a physical search,

1 the Attorney General shall require that the mini-
2 mization procedures required by this title for the
3 issuance of a judicial order be followed. In the ab-
4 sence of a judicial order approving such physical
5 search, the physical search shall terminate when the
6 information sought is obtained, when the application
7 for the order is denied, or after the expiration of
8 168 hours from the time of authorization by the At-
9 torney General, whichever is earliest. In the event
10 that such application for approval is denied, or in
11 any other case where the physical search is termi-
12 nated and no order is issued approving the physical
13 search, no information obtained or evidence derived
14 from such physical search shall be received in evi-
15 dence or otherwise disclosed in any trial, hearing, or
16 other proceeding in or before any court, grand jury,
17 department, office, agency, regulatory body, legisla-
18 tive committee, or other authority of the United
19 States, a State, or political subdivision thereof, and
20 no information concerning any United States person
21 acquired from such physical search shall subse-
22 quently be used or disclosed in any other manner by
23 Federal officers or employees without the consent of
24 such person, except with the approval of the Attor-
25 ney General if the information is significant foreign

1 intelligence information or indicates a threat of
2 death or serious bodily harm to any person. The At-
3 torney General shall assess compliance with the re-
4 quirements of the prior sentence and shall include
5 such assessments in the Attorney General's reports
6 under section 302(a)(2). A denial of the application
7 made under this subsection may be reviewed as pro-
8 vided in section 103.”.

9 (c) CONFORMING AMENDMENTS.—The Foreign Intel-
10 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
11 is further amended—

12 (1) in section 304(a)(5), by striking
13 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

14 (2) in section 305(k)(2), by striking
15 “303(a)(7)” and inserting “303(a)(6)”.

16 **SEC. 11. AMENDMENTS FOR EMERGENCY PEN REGISTERS**
17 **AND TRAP AND TRACE DEVICES.**

18 Section 403 of the foreign intelligence surveillance act
19 of 1978 (50 U.S.C. 1843) is amended—

20 (1) in subsection (a)(2) by striking “48 hours”
21 and inserting “168 hours”; and

22 (2) in subsection (c)(1)(C) by striking “48
23 hours” and inserting “168 hours”.

1 **SEC. 12. MANDATORY TRANSFER FOR REVIEW.**

2 (a) IN GENERAL.—In any case before any court chal-
3 lenging the legality of a classified communications intel-
4 ligence activity relating to a foreign threat, or in which
5 the legality of any such activity is in issue, if the Attorney
6 General files an affidavit under oath that the case should
7 be transferred to the Foreign Intelligence Surveillance
8 Court because further proceedings in the originating court
9 would harm the national security of the United States, the
10 originating court shall transfer the case to the Foreign
11 Intelligence Surveillance Court for further proceedings
12 under this section.

13 (b) PROCEDURES FOR REVIEW.—The Foreign Intel-
14 ligence Surveillance Court shall have jurisdiction as appro-
15 priate to determine standing and the legality of the com-
16 munications intelligence activity to the extent necessary
17 for resolution of the underlying case. All proceedings
18 under this paragraph shall be conducted in accordance
19 with the procedures set forth in section 106(f) of the For-
20 eign Intelligence Surveillance Act of 1978, except that the
21 Foreign Intelligence Surveillance Court shall not require
22 the disclosure of national security information to any per-
23 son without the approval of the Director of National Intel-
24 ligence or the Attorney General, unless in the context of
25 a criminal proceeding, disclosure would be constitutionally
26 required. Any such constitutionally required disclosure

1 shall be governed by the Classified Information Proce-
2 dures Act, Pub. L. No. 96-456, 94 Stat. 2025 (1980), or
3 if applicable, Title 18, United States Code, Section
4 2339B(f).

5 (c) APPEAL, CERTIORARI, AND EFFECTS OF DECI-
6 SIONS.—The decision of the Foreign Intelligence Surveil-
7 lance Court made under paragraph (b), including a deci-
8 sion that the disclosure of national security information
9 is constitutionally required, shall be subject to review by
10 the Court of Review established under section 103(b) of
11 the Foreign Intelligence Surveillance Act. The Supreme
12 Court of the United States shall have jurisdiction to review
13 decisions of the Court of Review by writ of certiorari
14 granted upon the petition of the United States. The deci-
15 sion by the Foreign Intelligence Surveillance Court shall
16 otherwise be binding in all other courts.

17 (d) DISMISSAL.—The Foreign Intelligence Surveil-
18 lance Court or a court that is an originating court under
19 paragraph (a) may dismiss a challenge to the legality of
20 a classified communications intelligence activity for any
21 reason provided for under law.

22 (e) PRESERVATION OF LITIGATION PRIVILEGES.—All
23 litigation privileges shall be preserved in the originating
24 court and in the Foreign Intelligence Surveillance Court,
25 the Foreign Intelligence Court of Review, and the Su-

1 preme Court of the United States, in any case that is
2 transferred and received under this section.

3 **SEC. 13. TECHNICAL AND CONFORMING AMENDMENTS.**

4 The Foreign Intelligence Surveillance Act of 1978
5 (50 U.S.C. 1801 et seq.) is further amended—

6 (1) in section 103(e)—

7 (A) in paragraph (1), by striking
8 “501(f)(1)” and inserting “102B(d) or
9 501(f)(1)”; and

10 (B) in paragraph (2), by striking
11 “501(f)(1)” and inserting “102B(d) or
12 501(f)(1)”; and

13 (2) in section 105—

14 (A) in subsection (a)(4), as redesignated
15 by section 105(1)(b)—

16 (i) by striking “104(a)(7)(E)” and in-
17 serting “104(a)(6)(D)”; and

18 (ii) by striking “104(d)” and inserting
19 “104(c)”; and

20 (B) in subsection (c)(1)(A), by striking
21 “104(a)(3)” and inserting “104(a)(2)”; and

22 (3) in section 106—

23 (A) in subsection (j), in the matter pre-
24 ceding paragraph (1), by striking “105(e)” and
25 inserting “105(d)”; and

1 (B) in subsection (k)(2), by striking
2 “104(a)(7)(B)” and inserting “104(a)(6)(B)”;
3 and
4 (4) in section 108(a)(2)(C), by striking
5 “105(f)” and inserting “105(e)”.

6 **SEC. 14. EFFECTIVE DATE.**

7 (a) Except as otherwise provided, the amendments
8 made by this Act shall take effect 90 days after the date
9 of the enactment of this Act.

10 (b) Notwithstanding any other provision of this Act,
11 any order in effect on the date of enactment of this Act
12 issued pursuant to the Foreign Intelligence Surveillance
13 Act of 1978 (50 U.S.C. 1801 et seq.) shall remain in effect
14 until the date of expiration of such order, and, at the re-
15 quest of the applicant, the court established under section
16 103 (a) of such Act (50 U.S.C. 1803(a)) may reauthorize
17 such order as long as the facts and circumstances continue
18 to justify issuance of such order under the provisions of
19 the Foreign Intelligence Surveillance Act of 1978, as in
20 effect on the day before the applicable effective date of
21 this Act. The court established under section 103(a) of
22 such Act shall extinguish any such order at the request
23 of the applicant.

1 **SEC. 15. CONSTRUCTION; SEVERABILITY.**

2 Any provision of this Act held to be invalid or unen-
3 forceable by its terms, or as applied to any person or cir-
4 cumstance, shall be construed so as to give it the max-
5 imum effect permitted by law, unless such holding shall
6 be one of utter invalidity or unenforceability, in which
7 event such provision shall be deemed severable from this
8 Act and shall not affect the remainder thereof or the appli-
9 cation of such provision to other persons not similarly situ-
10 ated or to other, dissimilar circumstances.